IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 206 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UMAKANT SOMABHAI PATEL

Versus

LAXMIBEN KANTILAL PATEL

Appearance:

MR MA BUKHARI for the Petitioner.

MR RJ GOSWAMI for Respondent No. 1-2,5-6,8-13

NOTICE SERVED for Respondent No. 3-4

MS TANHA N PARIKH for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner herein is original defendant No.2 of Special Civil Suit No.85 of 1996, which is pending in the Court of Civil Judge (Senior Division) at Mehsana.

The said suit is a suit for partition. The said suit was initially filed by two plaintiffs, by one Manjulaben Patel, heir of deceased Patel Somabhai, and by one Laxmiben Kantilal Patel, as co-plaintiff. During the pendency of the said suit, plaintiff No.1, Manjulaben Patel, expired. Therefore, an application for bringing her heirs on record was filed before the trial court. Since there was a delay of 3 days in filing the said application, an affidavit of one of the heirs of plaintiff No.1 was also filed, wherein it is stated that there is a delay of 3 days in filing the said application, but when the applicants went to meet their Advocate for filing such application, because of the strike of the Advocates, they could not meet their Advocate and in the process, delay of three days has occasioned in filing the said application. This being a suit for partition and since there is also another plaintiff, who is already there on the record, the trial court came to the conclusion that there is no abatement of the suit, as, the right to sue still survives, as, Laxmiben, another plaintiff, as co-plaintiff, is already alive and considering the fact that it is a suit for partition, the Court came to the conclusion that such suit has not abated, when the other plaintiff is already there on the record. The trial court accordingly allowed the said application Exhibit 82, by condoning the delay in filing the said application. The trial court directed that the heirs, whose names are mentioned in Exhibit 85, should be allowed to be joined as co-plaintiffs. It is the said order, which is challenged in this revision application.

Considering the fact that the suit is a suit for partition and considering the fact that the co-plaintiff is already alive and considering the fact that the trial court has given cogent reasons for condoning the delay, Mr.Bukhari, after taking instructions from his client, who is present in the Court, states that he wants permission to withdraw this revision application. Permission is granted. Rule is discharged. No order as to costs.

Considering the fact that the suit is of 1996 and the suit is for partition, the trial court is directed to hear the said suit expeditiously, latest by 31st December, 2004, as the suit for partition is not required to be delayed for such a long time. Writ of this Court be sent to the trial court forthwith so that the trial court can dispose of the suit within the stipulated time. Mr.Bukhari, learned Advocate for the petitioner, and Mr.Goswami, learned Advocate appearing for the other

side, submitted that their respective clients will cooperate for early disposal of the suit.

31st March, 2004 (P.B. Majmudar, J.)

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(apj)